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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,430	07/09/2003	Michael Tod Morman	13,857.1	9183
23556	7590	08/10/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			VO, HAI	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 08/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/616,430	MORMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hai Vo	1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1124</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election of Group II, claims 24-31 in the reply filed on 06/21/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 24-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this case, the support for the laminate being stretched in a first dimension to neck the laminate in a dimension perpendicular to the first dimension such that striated rugosities are formed in the perpendicular dimension is not found in the specification. However, the support for the laminate being stretched in a longitudinal dimension to neck the laminate in a dimension perpendicular to the longitudinal dimension such that striated rugosities are formed in the longitudinal dimension are found in the specification instead.

***Claim Objections***

3. Claim 31 is objected to because of the following informalities: the preamble "the neck laminate of claim 24" should be correctly replaced with "the method of claim 24" since claim 24 is directed to a method claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haffner (US 5,514,470) in view of McCormack (US 5,695,868).
- Haffner teaches a composite material comprising a necked nonwoven material and an elastic layer attached to the necked material to allow expansion and elastic retraction in the direction of the necking (abstract). Haffner does not specifically disclose the composite material comprising a non-elastic film layer. McCormack teaches a laminate comprising a breathable film and a nonwoven layer which are bonded to each other with tension in one of the layers during adhesive bonding or thermal point bonding (column 3, line 58; column 4, line 54; column 9, lines 50-55 and column 10, lines 27-30). McCormack teaches the film being stretched prior to formation of the laminate (column 9, lines 51-53). McCormack teaches

the film containing from 30 to 80% of a filler (column 3, lines 54-55). The breathable film is McCormack teaches that the laminate is stretched and once the tensioning force is removed, the laminate retracts, resulting in undulations being formed in the laminate (column 9, lines 60-67 to column 10, lines 1-5). Likewise, the undulations are formed in the dimension perpendicular to the stretching direction. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to bond a non-elastic film to the necked nonwoven material motivated by the desire to form undulations as desirable surface texture in the non-elastic film layer in the transverse dimension.

Haffner does not specifically disclose the composite material being stretched to about 1.2 to 1.6 times its original length. It appears that the laminate of Haffner as modified by McCormack meets all the structural limitations as required by the claims. The laminate comprises a necked nonwoven material and a non-elastic film layer attached to the necked material wherein striated rugosities are formed in the non-elastic film layer in the transverse dimension. Therefore, it is not seen that the laminate of Haffner as modified by McCormack would have performed differently than the necked laminate of the present invention in terms of stretching capability. Like laminate has like property. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. This is in line with *In re Spada*, 15 USPQ 2d 1655

(1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HV

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